IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2006

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

Writ Petition No.28369 of 2006

A.Sekar .. Petitioner

vs.

1. The Chief Engineer
   Highways and Rural
   Works Department
   Chepauk, Madras - 5

2. The Director of Rural Development
   Panagal Building, Saidapet
   Chennai - 15 .. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the first respondent dated 22.6.2006 in Memorandum No.54334/No.5(2)/2006 and quash the same and consequently direct the respondents to re-fix the seniority of the petitioner as overseer properly and with effect from 15.6.1981, the date of his promotion as overseer, as it was originally fixed by the respondents.

For petitioner : Mr.V.R.Shanmuganathan

For respondents : Mr.A.Edwin Prabhakar
Government Advocate

O R D E R

The petitioner was appointed as Assistant Draughtsman on 20.12.1980 and his service was regularised as Assistant Draughtsman with effect from 20.12.1980 and he was also promoted as Overseer on 15.6.1981 and his service was regularised as Overseer with effect from 21.12.1982. At that time, instead of fixing his seniority as on 15.6.1981 the date on which he was promoted as Overseer, his seniority was fixed as on 21.12.1982, namely, the period by which he has completed his probation of service.

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2. It is the case of the petitioner that thereafter, the first respondent has rectified the mistake by order dated 20.5.1988 by fixing the seniority of the petitioner as Overseer with effect from 15.6.1981 and he was placed in the seniority list as serial No.242-A.

3. According to the petitioner, by virtue of passing the Government Orders, there was some problems in respect of fixation the seniority. With the result, the first respondent has published theseniority list on 1.2.1989 in which the petitioner was placed in the seniority list as serial No.602 much below the original seniority, which was 242-A, according to him.

4. The further case of the petitioner is that he approached the Tamil Nadu Administrative Tribunal by filing O.A.No.2385 of 2004 and after such matter was transferred to this Court as W.P.No.27034 of 2005, this Court has directed the authorities to pass orders on the representation of the petitioner. Now, that impugned order is passed by the first respondent on 22.6.2006 rejecting the claim of the petitioner on the basis that the petitioner's claim itself is against the Tamil Nadu State Sub-ordinate service rules 35(F).

5. According to the learned counsel for the petitioner, even as per Rule 35(F) of the Tamil Nadu State Sub-ordinate service rules in case where it was rectification of the order, which results from the mistake of facts committed by the authority, the period of limitation of three years for the purpose of complying the revision of seniority is not applicable.

6. The reference to the impugned order shows that even though the reference has been made about the order of this Court directing the respondents to consider the representation of the petitioner and pass appropriate orders, the first respondent has taken a stand relying upon Rule 35(F) of the Tamil Nadu State Sub-ordinate service rules stating that for the purpose of complying the revision of seniority list, the petitioner has approached beyond three years of time which has been contemplated under the said Rule and therefore, the claim of the petitioner was rejected.

7. It is relevant to point out that Rule 35(F) of the Tamil Nadu State Sub-ordinate service rules which runs as follows:

> (f) Application for the revision of seniority of a person in a service, class, category or grade be submitted to the appointing authority within a period of three years from the date of appointment to such

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> service, class, category or grade or within a period of three years from the date of order fixing the seniority, as the case may be. Any application received after the said period of three years shall be summarily rejected. This shall not, however, be applicable to cases of rectifying orders, resulting from mistake of facts.

8. Therefore, according to the said Rule any application for the purpose of revision of seniority shall be filed within a period of three years from the date of appointment to such service, class, category or grade.

9. In the present case, the seniority of the petitioner as Overseer was re-fixed on 1.2.1989. By that order the original seniority of the petitioner as 242-A downgraded as 602 and by re-fixation of the seniority, the petitioner was affected. Even as per the petitioner, he approached the Tribunal only challenging the revision of re-fixation.

10. Taking into consideration the entire facts, I am of the considered view that the application filed by the petitioner for the purpose of fixation the revision of seniority is beyond three years, which is contemplated under Rules. It is in this regard the clause states that the application received after such period of three years shall be summarily rejected by the respondents.

11. I do not agree with the contention of the learned counsel for the petitioner, namely, only in rectification of the mistake, which has been done on 20.05.1988 when the petitioner's service as Overseer was regularised with effect from 21.12.1982 instead of 15.6.1981 and therefore, the rectification of mistake has come to an end even on 20.5.1988, and the first respondent has passed the order on 1.2.1989 on the revision of seniority after considering the claim of many other persons. On the face of it, I am not convinced that it is a case of rectification of mistake and therefore, the period of limitation is not applicable.

The writ petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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   Panagal Building, Saidapet
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1 cc to Government Pleader, SR.38945
1 cc to Mr.V.R.Shanmuganathan, Advocate, SR.39308

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dv/13.9.06

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